

The National Security Archive

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Senator John Cornyn
517 Hart Office Building
United States Senate
Washington D.C. 20510

Dear Senator Cornyn,

We write to commend your leadership in the cause of freedom of information, as expressed in the proposed legislation entitled "OPEN Government Act of 2005." This bill represents a major advance for government accountability, the right to know, and public participation in our democratic system. As the most active and prolific non-profit user of the U.S. Freedom of Information Act (FOIA), the National Security Archive has directly experienced the problems of delay and agency unresponsiveness that your legislation will address. We specifically applaud the following provisions of the bill:

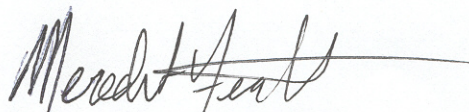
1. The proposed FOIA ombudsman office in the Administrative Conference of the United States (ACUS) will ensure that members of the public who find themselves confronting unresponsive FOIA offices will for the first time have the opportunity for independent review other than a lawsuit. The experience of many of our state governments as well as countries from Mexico to Japan shows that such an independent review helps both requesters and agencies make the process more efficient and avoids unnecessary litigation. ACUS itself is most appropriate for this function because of its long-standing track record of independent and respected legal analysis (as Justices Scalia and Breyer noted in their Congressional testimony for a re-authorized ACUS).
2. Agencies that fail to process FOIA requests in a timely manner will lose the ability to claim the discretionary exemptions allowed under FOIA. This provision will change the incentive structure within agencies towards greater efficiency and openness.
3. Plaintiffs who prevail in FOIA litigation will be able to recover attorneys' fees, a capacity which has lapsed in recent years but which is uniquely necessary in FOIA cases because there is no other remedy for repeated failures by government agencies.
4. The requirement of a FOIA tracking system and hotline for requesters will impose much-needed discipline on agencies and empower requesters to facilitate the processing. Likewise, the improvements in the reporting requirements placed on agencies will enable much more effective Congressional and public oversight of agency FOIA practices.
5. The study by the Office of Personnel Management of how to integrate open government performance into civil service evaluations, raises, and promotions may bring long-overdue recognition to the many highly-professional FOIA officers who are vital to improving the system.

These reforms will strengthen one of the glories of our democracy, the Freedom of Information Act, and we thank you for your initiative and your leadership.

Sincerely,



Thomas S. Blanton, Director



Meredith Fuchs, General Counsel